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Attorney for Plaintiff WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;)	Civ. No. CV03 00385 SOM-LEK
)	(Copyright)
Plaintiff,)	
)	DECLARATION OF TIMOTHY J.
vs.)	HOGAN; EXHIBITS "A" TO "F"
)	
HAWAIIAN EXPRESS SERVICE,)	
INC., a California corporation; et al.,)	
)	
Defendants.)	
_____)	

DECLARATION OF TIMOTHY J. HOGAN

I, TIMOTHY J. HOGAN, am an attorney licensed to practice before all the courts of the State of Hawaii and I make this declaration under the penalty of perjury. All the statements herein are true and correct to the best of my knowledge, information and belief. If called upon to testify regarding the matters herein, I am

competent and willing to do so.

1. Attached hereto as Exhibit “A” is a true and correct copy of the Declaration of Michael Gurzi filed in this case on May 11, 2005.

2. Attached hereto as Exhibit “B” is a true and correct copy of the Order Adopting Report of Discovery Master in *Wayne Berry v. Fleming Companies, Inc.*, CV 01-00446 SPK-LEK (D. Hawaii).

3. Attached hereto as Exhibit “C” is a true and correct copy of the Grand Jury Subpoena that I received from IRS CID Special Agents on behalf of Mr. Berry on or about November 4, 1999.

4. Attached hereto as Exhibit “D” is a true and correct copy of a cease and desist order issued by the Securities and Exchange Commission (“SEC”) against Fleming Companies, Inc..

5. Attached hereto as Exhibit “E” is a true and correct copy of a cease and desist order issued by the SEC against Kraft Foods related to its conduct related to Fleming Companies, Inc..

6. Attached hereto as Exhibit “F” is a true and correct copy of a cease and desist order issued by the SEC against Dean Foods that, upon information and belief, is the present owner of Hawaii’s Meadow Gold Dairy, in regard to its conduct related to Fleming Companies, Inc..

7. In 1998, Mr. Berry informed me that a person claiming to be

associated with the Bureau of Alcohol Tobacco and Firearms (“ATF”) had informed him that shipments of firearms were being made in Fleming-API ocean containers. I immediately called the ATF and met with them with Mr. Berry and out of the blue, the special agents asked Mr. Berry at that meeting whether he had any knowledge of cigarette smuggling being conducted by Fleming and requested his assistance in providing the ATF any information related to this activity. As far as the issues related to the department of defense, Mr. Berry requests that his attorney be able to convey these facts *in camera* to the Court.

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

DATED: Honolulu, Hawai’i, November 8, 2006.

/s/ Timothy J. Hogan
TIMOTHY J. HOGAN
Attorney for Plaintiff WAYNE BERRY